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CrI.RC.No.1678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.R.C.No.1678 of 2022

K. N. Karuppanan

... Petitioner

Vs

C. Murugan @ Murugesan

... Respondent

Prayer:- Criminal Revision filed under Section 397 read with 401 of Cr.P.C., to set aside the order, dated 23.09.2022 in C.M.P.No.2910 of 2017, on the file of the Judicial Magistrate No.1, Gobichettipalayam.

For Petitioner : Mr. J. Ranjith Kumar

For Respondent: Mr. K. Govi Ganesan

ORDER

This Criminal Revision is filed against the order, dated 23.09.2022 in C.M.P.No.2910 of 2017 on the file of the Judicial Magistrate No.1, Gobichettipalayam.



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2. The brief facts of the case is that the petitioner is the complainant in S.T.C.No.278 of 2011 for the offence under Section 138 of the Negotiable Instruments Act as against the respondent/accused. Initially, the complaint was filed in the year 2011, before 15 days of the legal notice. However, in order to cure the defects, the petitioner filed a petition in C.M.P.No.4122 of 2015 to withdraw the complaint prayed liberty to file a fresh complaint. Subsequently, based on the two Division Bench Judgments of this Court in ***CDJ 2008 MHC 2118 in the case of Bipin Mehta vs. Chandra Mohan and CDJ 2015 MHC 4557*** in the case of ***M/s.Jayalakshmi Textiles, rep. By Partner Balasubramanian and another vs. S.K.Kolandasamy***, this Court granted liberty to the petitioner, to file a fresh complaint. Challenging the same, the respondent has filed a petition under Section 482 of Cr.P.C. before this Court in Crl.O.P.No.11222 of 2017 and the same was dismissed. Thereafter, the petitioner filed a petition for condoning delay in filing fresh complaint under Section 142 of the Negotiable Instrument Act in C.M.P.No.2910 of 2017 and the same was dismissed on the ground that the petitioner has not filed the complaint within 30 days from the date of legal notice. Challenging the same, the present petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that already the trial Court granted liberty to the petitioner to file a fresh complaint in C.M.P.No.4122 of 2015 in S.T.C.No.278 of 2011 and considering the said fact, liberty was granted by this Court in Crl.O.P.No.11222 of 2017 vide order dated 06.08.2021. Contrary to the order passed by this Court, the trial Court refused to condone the delay and to take the case on file in S.T.C.No.278 of 2011, which is not sustainable one. Hence, this Court has to set aside the impugned order passed by the Trial Court and direction may be issued to the Trial Court to number the S.T.C.No.278 of 2011 and to take the case on file and a liberty may be granted to the petitioner to canvase all those points of legal issue and to pass appropriate order.

4. The learned counsel appearing for the respondent would submit that though the liberty was granted by the Trial Court to file a fresh complaint in C.M.P.No.4122 of 2015 in S.T.C.No.278 of 2011 and the same was confirmed by this Court, even then, the petitioner has taken statutory revocation issue before the Trial Court independently and the said



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issue was rightly rejected by this Court in Crl.O.P.No.11222 of 2017. So, the dismissal proceedings cannot be taken on file.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. It is evident from the records that upon liberty being granted by the Court below to cure the defects, the petitioner had withdrawn the earlier complaint so as to file a fresh complaint after curing the defects and the petition preferred against the said order before this Court has resulted in dismissal of the same. In such a backdrop, the petitioner has filed the present complaint, with a petition to condone the delay, as some delay had occasioned, which has been dismissed. When the petitioner had been granted liberty to file a fresh complaint, the delay envisioned and the reasons there for alone have to be looked at and upon being satisfied the Court ought to have passed the order. However, without considering the same, the Court below had dismissed the petition which is erroneous.



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7. Taking into consideration of the above facts and circumstances of the case and for the reasons aforesaid, this Court is inclined to allow the present Criminal Revision Case.

8. Accordingly, the Criminal Revision Case is allowed. The order, dated 23.09.2022 in C.M.P.No.2910 of 2017, on the file of the Judicial Magistrate No.1, Gobichettipalayam is set aside with a direction to the Court below to take the complaint on file in S.T.C.No.278 of 2011 and decide the same on merits in accordance with law. All the issue raised in this case is to be determined by the Court below at the time of trial. Consequently, the connected miscellaneous petition stands closed.

05.06.2024

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Internet : Yes

Index: Yes/No

Neutral Citation Case : Yes/No



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M.DHANDAPANI, J.,

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